

Honorable Leif B. Erickson  
Federal Magistrate Judge  
Missoula Division  
Russell E. Smith Courthouse  
201 East Broadway, Room 370  
Missoula, MT 59802

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
MISSOULA DIVISION**

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ANTHONY McILVAIN OSTHEIMER and  
MARY BACON PARKE OSTHEIMER,

CAUSE NO. CV 05-69-M-LBE

Plaintiffs,

vs.

FINDINGS AND  
RECOMMENDATION OF  
U.S. MAGISTRATE JUDGE

COMMISSIONER OF INTERNAL REVENUE,  
SECRETARY OF THE TREASURY,  
JOHN DOE, JANE DOE, and JANE ROE  
(employees of INTERNAL REVENUE SERVICE),

Defendants.

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This matter comes before the Court Plaintiffs' summary judgment motion filed on August 5, 2005. In response to the motion the Court issued an Order on August 28, 2005, identifying various defects and irregularities in the motion and supporting brief which were not in compliance with the Local Rules. Therefore, the Court held the motion in abeyance pending Plaintiff's compliance with the Local Rules.

Rather than simply cure the defects identified in Plaintiffs' August 5 filings, they instead re-filed their entire motion and all supporting documents on September 14, 2005.

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U.S. MAGISTRATE JUDGE - PAGE 1

Having reviewed the filings the Court finds Plaintiffs' September 14 motion is identical to their August 5 motion. Therefore, the Court will construe Plaintiffs' September 14, 2005 motion as superceding their August 5 motion.

Additionally, the Court notes the substance of Plaintiffs' September 14 motion is also addressed in Defendants' cross motion for summary judgment filed November 7, 2005.

To clean up the docket in this case **IT IS HEREBY RECOMMENDED** Plaintiffs' August 5 summary judgment motion should be **DENIED** on the basis the merits of the motion will instead be addressed in the Court's consideration of Plaintiffs' September 14 motion and Defendants' November 7, 2005 cross motion.

**NOW, THEREFORE, IT IS ORDERED** that the Clerk shall serve a copy of the Findings and Recommendation of the United States Magistrate Judge upon the parties. The parties are advised that pursuant to 28 U.S.C. § 636, any objections to these findings must be filed with the Clerk of Court and copies served on opposing counsel within ten (10) days after receipt hereof, or objection is waived.

DONE and DATED this 7th day of March, 2006.

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/s/ Leif B. Erickson  
Leif B. Erickson  
United States Magistrate Judge